

BEFORE THE
POSTAL REGULATORY COMMISSION

Periodic Reporting (Proposal Four)

:
:
:

Docket No. RM2021-7

UNITED PARCEL SERVICE, INC.'S MOTION REQUESTING
ACCESS TO NON-PUBLIC MATERIALS UNDER
PROTECTIVE CONDITIONS
(October 12, 2021)

United Parcel Service, Inc. ("UPS") respectfully submits this Motion pursuant to 39 C.F.R. § 3011.301¹ requesting access to the non-public library references filed by the Postal Service in this docket on August 30, 2021, and September 8, 2021.² Specifically, UPS requests access to the full, unredacted version of USPS-RM2021-7-NP2 (Nonpublic Material Relating to Proposal Four Reply Comments) and USPS-RM2021-7-NP3 (Nonpublic Material Relating to ChIR No. 2 Responses).³ This access is sought "for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission." 39 C.F.R. § 3011.300(c).

¹ The Commission has reorganized and amended certain regulations effective April 20, 2020. See Reorganization of Postal Regulatory Commission Rules, 85 Fed. Reg. 9615 (Feb. 19, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-02-19/pdf/2020-01055.pdf>. The sections dealing with non-public materials that were previously located in 39 CFR part 3007 are now located in part 3011. *Id.*

² See Notice of Filing of USPS-RM2021-7-NP2 and Application for Nonpublic Treatment, Dkt. No. RM2021-7 (Aug. 30, 2021); Notice of Filing of USPS-RM2021-7-NP3 and Application for Nonpublic Treatment, Dkt. No. RM2021-7 (Sept. 8, 2021).

³ UPS previously requested and received access to USPS-RM2021-7-NP1. See Order Granting Motion for Access to Non-Public Materials (Order No. 5971), Dkt. No. RM2021-7 (Aug. 30, 2021).

UPS seeks access to the materials for its outside counsel and consultants only, so they may assist UPS in making informed comments in numerous pending and upcoming dockets, including the annual compliance review (ACR2020 and ACR2021), the appropriate share requirement review (RM2017-1), and UPS's petition regarding seasonality costing (RM2020-9). These outside counsel and consultants are identified in Exhibit 1 to this motion and each has executed a copy of the Commission's protective order conditions.⁴

In determining whether to grant access to non-public data, the Commission "shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c)." See 39 C.F.R. § 3011.301(e). UPS's request satisfies this test. UPS has a substantial interest in the proposed Special Purpose Carrier Cost System ("SPCCS"), which relates not only to the present RM2021-7 docket, but also has implications for many other dockets, including the annual compliance review. The requested materials include "carrier costing information regarding competitive products of the type provided under seal within various nonpublic folders in the FY 2020 Annual Compliance Report,"⁵ and are valuable to interested persons who may wish to evaluate the new City Carrier costing system.

The requested materials are relevant to evaluating the City Carrier estimation methodology and developing meaningful, informed feedback on this system. The

⁴ UPS specifies that it did not provide notice of its Motion for Access prior to this filing to each person identified in the Postal Service's application for nonpublic treatment pursuant to 39 C.F.R. § 3011.201(b)(2).

⁵ Notice of Filing of USPS-RM2021-7-NP2 and Application for Nonpublic Treatment, Dkt. No. RM2021-7 (Aug. 30, 2021), at 1; Notice of Filing of USPS-RM2021-7-NP3 and Application for Nonpublic Treatment, Dkt. No. RM2021-7 (Sept. 8, 2021), at 1.

materials will enable UPS to make more informed comments during the annual compliance review (ACR2020 and ACR2021), because carrier costing information forms a major part of the Postal Service's costs and bears on whether the Postal Service's package business bears the proper costs truly associated with that business. This information is also relevant to the appropriate share requirement review (RM2017-1), because carrier costing information affects the calculation of attributable costs, while the "appropriate share" of institutional costs that must be covered by competitive revenues should be tethered to the growing competitive products' business. Finally, this information is relevant to UPS's petition regarding seasonality costing (RM2020-9), because carrier costing information is relevant to patterns in peak-season costs that are caused by competitive products, and because peak-season costs are often overlooked by existing methodologies.

For the foregoing reasons, UPS respectfully requests that this Motion be granted.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

Attorney for UPS

Exhibit 1

1. Steig Olson
2. David Cooper
3. David LeRay
4. Christopher Seck
5. Kathleen Lanigan
6. Andrew Sutton
7. Jianjian Ye
8. Nicholas Powers
9. Kevin Neels
10. James Banovetz
11. Bogdan Genchev
12. Findley Bowie
13. Misha Mubashar Khan
14. Christopher Zhao
15. Ezra Frankel
16. Jacob Cunningham

Protective Conditions Statement

The Postal Service requested confidential treatment of non-public materials identified as USPS-RM2021-7-NP2 and USPS-RM2021-7-NP3 (Periodic Reporting (Proposal Four)). UPS (“the movant”) requests access to these materials that have been filed in Docket No. RM2021-7.

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement,
- the Certification to Comply with Protective Conditions,
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission’s rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.
2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of

activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

- a. must use these materials only related to this matter; and
- b. must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
- b. Excerpts from, parts of, or the entirety of these materials;
- c. Written materials that quote or contain these materials; and
- d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as "Confidential" and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person (and any individual working on behalf of that person) who

has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson

Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com


Attorney for UPS

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. RM2021-7 has been authorized by the Commission. The cover or label of the copy obtained is marked with my name.

I certify that I have read and understand the protective conditions statement and this certification to comply with protective conditions. I certify that I am eligible to receive access to materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

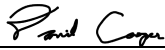
Name	<u>Steig Olson</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	 <u></u>
Date	<u>10/01/2021</u>

CERTIFICATION

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Name	<u>David Cooper</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>10/1/2021</u>

CERTIFICATION

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Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>10/05/2021</u>

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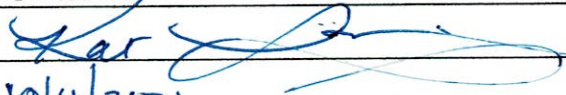
Name	<u>Christopher Seck</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>Oct. 1, 2021</u>

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Name	<u>Kathleen Lanigan</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>10/4/2021</u>

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Name	<u>Andrew T. Sutton</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>10/5/2021</u>

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Name	<u>Jianjian Ye</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>10/4/21</u>

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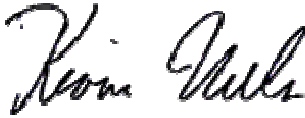
Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>October 4, 2021</u>

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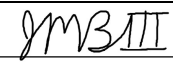
Name	<u>Kevin Neels</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>October 8, 2021</u>

CERTIFICATION

The undersigned represents that:

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Name	<u>James Banovetz</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>10-04-2021</u>

CERTIFICATION

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Name	<u>Bogdan Genchev</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Bogdan Genchev</u>  Digitally signed by Bogdan Genchev Date: 2021.10.04 13:44:05 -04'00'
Date	<u>10/4/2021</u>

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Name	<u>Findley Bowie</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>C. Findley Bowie III</i></u>
Date	<u>10/04/2021</u>

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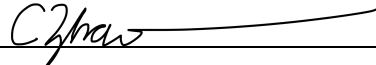
Name	<u>Misha Mubashar Khan</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>MISHA M. KHAN</u>
Date	<u>10/04/2021</u>

CERTIFICATION

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Name	<u>Christopher Zhao</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>10/04/2021</u>

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Name	<u>Ezra Frankel</u>
Firm	<u>The Brattle Group</u>
Title	<u>Lead Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>October 4, 2021</u>

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Name	<u>Jacob Cunningham</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>Jacob Cunningham</i></u>
Date	<u>10/04/2021</u>